

Isle of Man Customs and Excise

Compliance Checks – Penalties for inaccuracies in returns and documents

This factsheet contains information about the penalties we may charge if you have sent us an inaccurate return or other document.

This factsheet is one of a series. For the full list of factsheets in the Compliance checks series, go to <http://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/public-notices/visits-by-customs-and-excise-officers/>

When may we charge a penalty for an inaccuracy

We may charge you a penalty if you send us a return or other document that contains an inaccuracy, and the inaccuracy:

- results in tax being unpaid, understated or over-claimed, and
- was careless, deliberate or deliberate and concealed (we refer to these as 'behaviours' which are explained later in this factsheet).

If you ask someone else, such as an employee or adviser, to do something on your behalf, you must do as much as you can to make sure that an inaccuracy does not occur. If you do not do this, we may charge you a penalty.

When we will not charge a penalty for an inaccuracy

We will not charge a penalty for an inaccuracy if you took reasonable care to get things right but your return or document was still wrong. Some of the ways you can show that you took reasonable care include:

- keeping accurate records so that you can complete your tax records accurately
- checking with a tax adviser or with us if you are not sure about anything.

Disclosing an inaccuracy before we find it

If you tell us about an inaccuracy before you have any reason to believe that we are about to find it, we call this an 'unprompted disclosure'. If you tell us about an inaccuracy at any other time, we call it a 'prompted disclosure'. Once we have started a check, a disclosure can only be unprompted if, exceptionally:

- it is about an unrelated inaccuracy, and
- you had no reason to believe that we could have found it during our check.

The minimum penalty for an unprompted disclosure is lower than the minimum penalty for a prompted one.

If you send us a return or document that you believe is correct and you later find that it contains a careless inaccuracy, we may be able to reduce the penalty to nil if you make an unprompted disclosure.

If you need help

If you have any questions, please contact us. You can also look for the information you need on our website, <http://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/>

Authorising a representative

You can authorise someone to deal with us on your behalf. This includes professional tax advisers, friends or relatives. They can deal with us just for a compliance check, or more permanently for your day to day tax affairs.

If you want to authorise a professional tax adviser, they will be able to give you a form to complete and send to us. If you want to authorise someone other than a professional tax adviser, you will need to write to tell us who you want to authorise and what you want them to deal with for you.

What if you are unhappy with our service

If you are unhappy with our service, please tell the person or office you have been dealing with. They will try to put things right. If you are still unhappy, they will tell you how to complain.

Privacy Notice

To find out more about how we collect and use personal information, contact any of our offices or visit our website at:

<https://www.gov.im/about-the-government/departments/the-treasury/privacy-notice/> We will send you a paper copy if you telephone us or write to us using the contact details provided on this form.

What you can do to reduce any penalty we may charge

We can reduce the amount of any penalty we charge depending on our view of how much assistance you gave us. We refer to this assistance as the 'quality of disclosure' or as 'telling, helping and giving'.

Examples of telling, helping and giving include:

- telling us about, or agreeing that there is something wrong and how and why it happened
- telling us everything you can about the extent of what is wrong as soon as you know about it
- telling and helping us by answering our questions in full
- helping us to understand your accounts or records
- helping us by replying to our letters quickly
- helping us by agreeing to attend any meetings, or visits at a mutually convenient time
- helping us by checking your own records to identify the extent of the inaccuracy
- helping us by using your private records to identify sales or income not included in your tax return
- giving us access to documents we have asked for without unnecessary delay
- giving us access to documents we may not know about, as well as those that we ask to see

We will reduce the penalty by the maximum amount possible if you:

- tell us everything you can about any inaccuracy as soon as you know about it or you believe we are about to find it
- do everything you can to help us correct it

If you delay telling us, you may still be entitled to a reduction but it will be smaller. If we do not need any extra assistance from you we will give you the full reduction that the law allows for telling, helping and giving.

Letting us know about any special circumstances

If there are any special circumstances that you believe the officer dealing with the check should take into consideration when calculating the penalty, you should let them know straightaway.

How we work out the amount of a penalty

There are eight stages in working out the amount of any penalty. Each stage is explained in more detail below.

1. Calculating the amount of the potential lost revenue (PLR)

The penalty is a percentage of what we call the 'potential lost revenue'. Potential lost revenue (PLR) is the amount that arises as a result of correcting an inaccuracy in a return or document, an incorrect repayment or an incorrect claim. The officer dealing with the check will explain how this is calculated.

There are different rules about calculating the PLR where there are repayments or accounting timing issues resulting in delayed tax. If you need to know more, please ask the officer dealing with the check.

2. Determining our view of the 'behaviour'

When there is an inaccuracy, we will work with you to find out what caused it. We refer to this as the 'behaviour'. The type of behaviour will affect whether we charge a penalty and the amount of the penalty. There are four different types of behaviour.

Reasonable care

Everyone has a responsibility to take reasonable care over their tax affairs. What 'reasonable care' is will depend on each customer's abilities and circumstances.

If there was anything about your health or personal circumstances that made it difficult for you to take reasonable care, please tell the officer that is carrying out the check. Telling them will mean that they can take this into account when considering whether you took reasonable care.

If you took reasonable care to get things right but your return or document still contained an inaccuracy, we will not charge you a penalty. Some of the ways you can take reasonable care include:

- keeping enough records to make accurate tax returns
- keeping those records safe
- asking us or a tax adviser if you are not sure about anything and following any advice given.

Careless

This is where you failed to take reasonable care to get things right.

Deliberate

This is where you knew that a return or document was inaccurate when you sent it to us. Examples of deliberate inaccuracies include deliberately understating your income.

Deliberate and concealed inaccuracies

This is where you knew that a return or document was inaccurate and you took active steps to hide the inaccuracy from us, either before or after you sent it to us. An example of taking active steps to conceal an inaccuracy is where you create a false invoice to cover a non-existent stock purchase.

3. Deciding whether the disclosure was unprompted or prompted

This determines the minimum penalty percentage that we can charge. This is explained in more detail in the section of this factsheet titled 'Disclosing an inaccuracy before we find it'.

4. Deciding the range that the penalty falls within

The penalty percentage falls into one of six ranges. The range it falls into depends on the type of behaviour and whether it was a 'prompted' or 'unprompted' disclosure. The following table shows the six penalty ranges.

Type of behaviour	Unprompted disclosure	Prompted disclosure
Reasonable care	No penalty	No penalty
Careless	0% to 30%	15% to 30%
Deliberate	20% to 70%	35% to 70%
Deliberate and concealed	30% to 100%	50% to 100%

5. Working out the reductions for the quality of disclosure (also referred to as 'telling, helping and giving')

The quality of disclosure ('telling, helping and giving'), determines where the penalty will fall within the penalty range. The reduction we give depends on how much assistance you give us. For:

- telling we give up to 30%
- helping we give up to 40%
- giving access to records we give up to 30%.

6. Calculating the penalty percentage rate

This penalty percentage rate is determined by the penalty range and the reduction for the quality of disclosure.

Example

We found a careless inaccuracy that the customer had not told us about before we started our check. When we told them about the inaccuracy, they agreed with us. This was a prompted disclosure.

The penalty range for a careless inaccuracy with a prompted disclosure is 15% to 30% of the potential lost revenue (PLR).

The reduction for quality of disclosure (telling, helping and giving) was 70%.

To work out the penalty percentage rate, we first calculate the difference between the minimum and maximum penalty percentages.	$30\% \text{ minus } 15\% = 15$
We then multiply that figure by the reduction for quality of disclosure to arrive at the percentage reduction.	$15 \times 70\% = 10.5\%$
We then deduct the percentage reduction from the maximum penalty percentage we can charge.	$30\% \text{ minus } 10.5\% = 19.5\%$
This gives us the penalty percentage rate	19.5%

7. Calculating the amount of the penalty

To calculate the amount of the penalty, we multiply the potential lost revenue (PLR) by the penalty percentage rate. For example, if the PLR in the example above was £3,000, and there were no other reductions, the penalty would be £585 ($£3,000 \times 19.5\% = £585$).

8. Considering other reductions

After working out the amount of the penalty, we then take into account any other reductions that are necessary. For example, where we have already charged another penalty on the same tax or duty. This then gives the amount of penalty that we will charge.

How we can suspend a penalty

We can suspend a penalty for a careless inaccuracy if we:

- can set conditions to help you avoid penalties in the future, and
- believe you can meet these conditions.

We can suspend a penalty for up to a maximum of two years. Normally the suspension period will be as short as possible to allow you to meet the conditions. If we suspend your penalty, you will not have to pay it if you meet the conditions, unless you are charged another inaccuracy penalty

during the suspension period.

During the suspension period you must make sure you do not send us any other returns that contain inaccuracies. If you do, this may make you liable to another inaccurate penalty during the suspension period. If you become liable to another inaccurate penalty during the suspension period, you'll have to pay the previously suspended penalty.

You can find more information in factsheet 10 (MAN) *Suspending penalties for careless inaccuracies in returns or documents*. Details of how you can get a copy are on page 1.

We cannot suspend penalties for any other type of behaviour.

How we will tell you about a penalty

We will write to you to tell you how much the penalty is and how we have worked it out. If there is anything about the penalty that you do not agree with, or if you think there is any information we have not already taken into account, you should tell us straightaway.

After taking account of anything you have told us, we will then send you a penalty assessment notice.

When a company officer may have to pay some or all of a company's penalty for a deliberate inaccuracy

A company officer may have to pay some or all of the company penalty if:

- they have gained, or attempted to gain, personally from a deliberate inaccuracy
- the company is, or we believe it is, about to become insolvent – even if the officer did not gain personally from the deliberate inaccuracy.

If the company pays the penalty, we will not ask the individual officers to pay.

A company officer is a director, shadow director, company secretary or manager of a company, or a member of a limited liability partnership.

What happens if you have deliberately done something wrong

If you:

- give us information that you know to be untrue, whether verbally or in a document, or
- dishonestly misrepresent your liability to tax or claim payments to which you are not entitled

we may carry out a criminal investigation with a view to prosecution.

What to do if you disagree

You can appeal against most of the decisions that we make. We will write and tell you when we make a decision that you can appeal against. We will also explain the decision and tell you what to do if you disagree. You will usually have three options.

Within 30 days you can:

- send new information or arguments to the officer you have been

dealing with

- have your case reviewed by an IOM Customs & Excise officer who has not been involved in the check
- arrange for your case to be heard by an independent tribunal, who will decide the matter.

You can find more information about this in factsheet IOMC&E1 *IOM Customs & Excise decisions – what to do if you disagree*. Details of how you can get a copy are on page 1.

Your rights when we are considering penalties

The European Convention on Human Rights gives you certain important rights. If we are considering penalties, we will tell you. We will also tell you that these rights apply and ask you to confirm that you understand them. These rights are explained below.

- If we ask you any questions to help us decide whether to charge you a penalty, you have the right not to answer them. The amount of help that you give us when we are considering penalties is entirely a matter for you to decide.
- When deciding whether to answer our questions, you may want to get advice from a professional adviser – particularly if you do not already have one.
- If you disagree with us about the tax or any penalties we believe are due, you can appeal. If you appeal about both tax and penalties, you have the right to ask for both appeals to be considered together.
- You have the right to apply for funded legal assistance for dealing with any appeal against certain penalties.
- You are entitled to have the matter of penalties dealt with without unreasonable delay.

You can find more information about these rights in factsheet 9 (MAN) *Compliance Checks – The Human Rights Act and Penalties*.

Which taxes and tax periods these penalty rules apply to:

These penalty rules apply to the following taxes for returns or documents that were due to be sent to us on or after 1 April 2009, and relate to a tax period beginning on or after 1 April 2008.

VAT

These penalty rules apply to the following taxes for returns or documents that were due to be sent to us on or after 1 April 2010, and relate to a tax period beginning on or after 1 April 2009.

Air Passenger Duty
Alcohol Duty
Excise duties (Holding and Movements)
Gambling Duty
Hydrocarbon Oils Duty
Lottery Duty
Machine Games Duty (from 1 February 2013)
Tobacco Duty

These penalty rules apply to the following taxes for returns or documents that relate to the following periods.

Machine Games Duty (for tax periods beginning on or after 1 February 2013)

Soft Drinks Industry Levy (for periods beginning on or after 1 April 2019)

